

Remarks/Arguments

Reconsideration of this application, as amended, is respectfully requested.

I. Status of the Claims

After entry of these amendments, claims 1-4, 6-9, 12-19, 21 and 23 are pending. No claims are amended.

II. Restriction Requirement

In the office action mailed August 19, 2008, the Examiner requires restriction among one of twenty separate R¹ groups, as follows:

1. phenyl, napthyl
2. piperazinyl
3. piperidinyl, pyridyl, quinolinyl, dihydropyridinyl, isoquinolinyl
4. pyrrolyl, dihydropyrrolyl, pyrrolidinyl, indolyl
5. pyrazinyl, dihydropyrazinyl,
6. pyrazolyl, dihydropyrazolyl
7. pyridazinyl
8. pyrimidinyl, dihydropyrimidinyl
9. tetrazolyl, dihydrotetrazolyl
10. furanyl, dihydrofuranyl, tetrahydrofuranyl
11. imidazolyl, dihydroimidazolyl, benzimidazolyl
12. triazinyl
13. pyranyl, tetrahydropyranyl
14. thiazolyl
15. triazolyl, dihydrotriazolyl
16. thiienyl, dihydrothienyl, thiophenyl, tetrahydrothienyl
17. morpholinyl, thiomorpholinyl
18. dihydrothiadiazolyl
19. oxazolyl, isoxazolyl, benzoxazolyl
20. oxadiazolyl

In response, applicants elect the Group I claims, wherein R¹ is phenyl or napthyl, with traverse.

The Examiner also requires election of a single species, in the event that no generic claim is allowable. In response, applicants elect the species of Example 3, wherein R³ is (a), wherein R^{6a} and R^{6b} are hydrogen, R^{6c} is fluoro; R² is (1) wherein R⁴ and R⁷ are both methyl; X is NH; m is 1 and R¹ is unsubstituted phenyl.

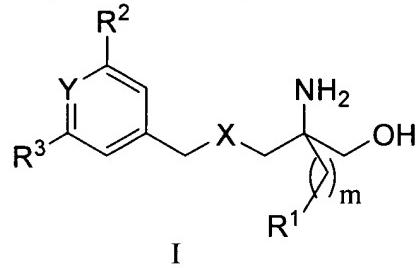
III. Traversal of Restriction Requirement

The Examiner states that the inventions listed in Groups 1-20 "do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. . . ." However, the Examiner provides no explanation of how the groups lack a single inventive concept. In fact, the statements made by the Examiner:

Group I is drawn to a compound, its composition and method of use.
Group II is a different compound with respect to the compound of Group I. Therefore, there is no special technical feature for the compounds or different fields of application of the compounds.

seem to relate to the restriction requirement in the office action mailed May 14, 2008, rather than the twenty-way restriction now asserted by the Examiner.

Applicants assert that the unity of invention requirement is met by the structure (I) shown below:



wherein Y is CH and X is O or NH, as required by the claims, and requests that the Examiner reconsider the restriction.

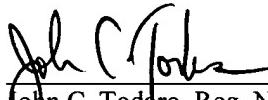
IV. Conclusion

In view of the action taken, it is believed that the restriction requirement should now be withdrawn, and this application should now be examined as to the full scope of pending claim 1.

An early and favorable examination is earnestly solicited.

Respectfully submitted,

By


John C. Todaro, Reg. No. 36,036
Attorney for Applicants

MERCK & CO., Inc.
P.O. Box 2000
Rahway, New Jersey 07065
Tel.: (732) 594-0125

Date: September 19, 2008